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indcon Polymech Ltd. Vs. Switching Technologies Gunther Ltd.

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Court : Delhi

Decided On : Sep-20-1994

Reported in : 56(1994)DLT31; 1994(31)DRJ12

Judge : R.C. Lahoti, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 151

Appeal No. : Suit No. 53 of 1991

Appellant : indcon Polymech Ltd.

Respondent : Switching Technologies Gunther Ltd.

Advocate for Pet/Ap. : C.P. Francis and; S.P. Aggarwal, Advs

Judgement :

R.C. Lahoti, J.

(1) This order disposes of I.A No. 7110/93, an application under Section 151 Civil Procedure Code and Order 39 Rule I Civil Procedure Code filed by the defendant. The plaintiff has filed a suit for recovery of Rs. 2,22,465.64 against the defendant. The defendant has preferred a counter claim to the tune of Rs. 50 lakhs against the plaintiff.

(2) It appears that the defendant had commissioned a gas plant under Idbi bills re-discounting claim on deferred payment. The payment was guaranteed by the defendant's bankers, that is, the State Bank of India (Overseas Branch, Madras) in ten installments totalling to Rs.19,50,400.00 Out of the ten installments, the defendant's bank had already paid six installments totalling to Rs. 12,88,600/. The remaining four installments was to fall due on 20.8.1993, 20.2.94, 20.8.94 and 20.2.95. The case of the defendant is that defective machinery was supplied by the plaintiff and so the Installments was liable to be adjusted against the claim of the defendant. In the background of the above said facts, the defendant sought for the following interim reliefs : (i) An ad interim injunction against the plaintiff from Realizing or enforcing the payment of the outstanding balance Installments; (ii) an injunction restraining the plaintiff from disposing of or dealing with any of its assets except in the normal course of business

(3) The above application was filed on 10.8.93 On 19.8.93, the Court directed the plaintiff to remain restrained from Realizing and enforcing the payment of balance Installments from the defendant or their bank.

(4) In its reply to the application, the plaintiff has contested the prayer made by the defendant on all possible grounds. It has also been stated, inter alia, that the defendant had signed ten Hundis payable after every six months which Hundis were co-accepted by the defendant's bank. These Hundis were in turn got discounted by the plaintiff from its bank. The plaintiff had received full payment and no Installment had remained payable to the plaintiff. It was submitted that relief of injunction restraining the recovery of Installments was rendered redundant by the time of hearing. It was contended by the learned counsel for the defendant that the plaintiff was guilty of breach of the court's orders inasmuch as it had got cleared the Installments through bank in spite of restraint order passed by the court.

(5) To the extent to which the defendant has sought for a restraint order in the matter of Installments realisable from the bank is concerned, the relief has been rendered redundant in view of the plaintiff having realised the Installments. If the plaintiff has committed breach of the restraint order passed by the Court then the

plaintiff is liable for the consequences but that shall be considered on an appropriate occasion when the Court may be called upon to do so.

(6) In as much as the injunction sought for by the defendant restraining the plaintiff from disposing of their assets and property is concerned, the order cannot be passed by reference to Order 39 Rule I Civil Procedure Code because the property of the plaintiff is not a subject matter of the suit or a property in dispute in the suit. The only provision by reference to which the defendant could have sought for the relief prayed for is Order 38 Rule 5 CPC. The defendants application does not set out the ingredient nor does it satisfy the two conditions contemplated by sub rule (1) of Rule 5 of Order 38 CPC. As held in Padam Sen V. State Of U.p., 0065/1960 : 1961 CriLJ322 , the provisions of Rule 5 of Order 38 are intended to prevent a decree that may be passed being rendered infructuous and Rule l(b) of Order 39 is applicable where the defendant threatens to dispose of his property to defraud creditors. None of these provisions have any application to the facts of the present case . The plaintiff is a public limited company registered under the Companies Act, 1956. It is a registered exporter and eligible to Rep license and other export benefits available under the Govt of India policy in force for the time being. It manufactures and sells gas generating plants. Nothing has been brought on record to suggest much less to hold that the plaintiff is about to dispose of the whole or any part of its property or is about to remove the whole or any part of its property from the local limits of the jurisdiction of the Court. The registered office of the plaintiff is situated at New Delhi. Merely because the plaintiff has withdrawn the amount of certain Installments from the bank that would not by itself attract the wrath of any of the two provisions. There is no reason to hold the transactions having taken place otherwise than as a part of the ordinary business activity of the plaintiff.

(7) In addition, it may be pointed out, that order 38 Rule 5 (1) enjoins the Court making a direction to the defendant within a time to be fixed by it either to furnish a security in such sum as may be specified in the order or to appear and show cause why he should not furnish security. Any order of attachment made without complying with the provisions of sub rule (1) shall be void. The defendant never insisted on the court making such a direction under sub rule (1).

(8) The learned counsel for the defendant submitted .in the alternative that the prayer made by the defendant was capable of being granted under Section 151 .CPC and for that purpose placed reliance on Catton Corporation of India v. United industrial Bank Ltd, Air 1983 1272 and ManoharLal. vs Rai Bahdanr, : AIR 1962 SC527 . However, in view of there being specific provisions covering the prayer made by the defendant which have already been referred to here in above, the defendant cannot be permitted to take resort to Section 151 Civil Procedure Code when it has specifically been held not entitled to relief under the specific provisions of the CPC.

(9) For the foregoing reasons the application I.A. is rejected. It is clarified that the rejection of the defendant's application shall not absolve the plaintiff of the liability which it might have already incurred for the alleged violation of the order of the Court dated 19.8.93.

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